IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7463 OF 2005

Sundardas Thawardas Bhagtani .. Petitioner

Versus

Aarti @ Padmini w/o.Sunderdas Bhagtani .. Respondent.

Mr.S.D.Patil for petitioner

Mr.Vinod Tayade for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th February 2006.

P.C.

. Heard Mr.Patil for petitioner and Mr.Tayade for respondent.

2. Petitioner husband is aggrieved by an order passed on 5th September 2005 below Exh.17 in Special Civil Suit No.155 of 2003.

3. Above application was preferred by the petitioner on 24th January 2005 and he applied for modification of the order passed earlier on 27th October 2004 awarding interim maintainance.

4. In the submission of Mr.Patil, appearing for petitioner, trial court was in obvious error in not being able to differentiate between application for review of an order and an application seeking modification of an order, which is permissible in law. The court below has treated application for modification as if it is an application for review and further proceeded to reject the same on the ground that the interim maintainance granted vide order dated 27th October 2004 is final and conclusive as the said

order is not challenged before superior court by the petitioner.

5. Mr.Tayade, on the other hand submits that whatever may be the ultimate direction in this petition, the fact remains that petitioner has not shown his bonafides in the matter. He has not paid any sum to the respondent wife. He submits that even if the minor child is with petitioner husband, it does not mean that maintainance awarded towards wife should not be paid by him.

6. Mr.Patil upon noticing above submits that this Court should pass appropriate orders and in the interest of justice should afford an opportunity to petitioner to have his application for modification of the order considered on its own merits and in accordance with law.

7. In my view, interest of justice would be

served if a balanced view is taken.

8. Accordingly, following order:-

(a) On petitioner depositing a sum of Rs.30,000/- in trial court within a period of four weeks from today the order dated 5th September 2005 below Exh.17 would stand quashed and set aside;

(b) Upon such deposit, Application below exh.17 would stand restored to file for disposal on its own merits and in accordance with law within six weeks from the date of deposit as aforesaid.

(c) If the amount as directed is deposited it shall be permitted to be withdrawn by respondent wife and the said withdrawal shall be without prejudice to the rights and contentions of both sides

and appropriate adjustments should be made by the trial court.

(d) Needless to state that if the amount is not deposited within the time stipulated, petition would stand dismissed without further reference to Court and in that event, order dated 5th September 2005 below Exh.17 and earlier order dated 27th October 2004 would stand confirmed.

(e) With these directions, petition is disposed of.

(S.C.DHARMADHIKARI, J)